UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

New York University

Employer

Case No. 2-RC-23481

and

GSOC/UAW

Petitioner

PETITIONER'S OPPOSITION TO EMPLOYER'S CONDITIONAL REQUEST FOR REVIEW

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I. PROCEDURAL POSTURE

The Principal issue presented by this case is whether the Board should overrule Brown University, 342 NLRB 483 (2004) and return to the holding of New York University, 332 NLRB 1205 (2000) (NYU I) that graduate student employees are entitled to the same rights as other employees under the NLRA. The Petitioner has filed a Request for Review, asking the Board to overrule Brown, restore legal protections for graduate student employees, and direct an election in the unit found appropriate by the Acting Regional Director. The Employer has filed a "conditional" Request for Review. The Employer asks that, if the Board grants the Union's to request to reconsider Brown, then the Board also decide from scratch virtually every factual and legal issue raised in this case. The Employer has failed to establish grounds for such action.

This petition, filed by GSOC/UAW ("Petitioner" or "the Union") seeks to re-establish the collective bargaining relationship established in NYU I. The Regional

Director dismissed the petition based upon Brown, because the Petitioner seeks to represent a unit of graduate student employees who, under Brown, are not entitled to the protection of the Act. The Board reopened this case in New York University, 356 NLRB No. 7 (2010) ("NYU II"), holding that there are "compelling reasons for reconsideration" of Brown. Accordingly, the Board remanded this case to the region for a hearing and decision.

As directed, the Acting Regional Director conducted a hearing with respect to the terms and conditions of employment of graduate students who are paid to perform services for New York University ("the Employer," "the University" or "NYU"). The parties presented evidence relevant to whether Brown should be overruled, and to the scope and composition of the unit. The Employer argued that, because of changes in its operations known as "FAR-4," a unit comprised of graduate student employees like that previously represented by the Petitioner after NYU I would no longer be appropriate. The Union, on the other hand, presented evidence not available to the Board in NYU I that research assistants ("RAs") in the sciences perform services for the University in exchange for compensation. The Union therefore argued that, although science RAs were excluded from the bargaining unit in NYU I, they should be included in the unit here. The Acting Regional Director issued a decision that analyzed all of this evidence.

With respect to the unit issues, the Acting Regional Director found that, with certain modification, the petitioned-for unit would be appropriate if the graduate students have the right to form a union. In particular, he rejected the Employer's contention that, because FAR-4 unilaterally reclassified teaching assistants ("TAs") as adjunct faculty,

they had been added to a separate adjunct bargaining unit. Rather, the Acting Regional Director concluded that these employees continue to share a community of interest with the RAs. He also agreed with the Union's contention that RAs whose stipends are funded by grants from outside entities perform services for the University and should be included in the petitioned-for unit. Finally, he concluded that certain hourly-paid graduate student employees share a community of interest with the RAs and the teaching employees who are now classified as adjunct faculty. Nevertheless, the Acting Regional Director dismissed the petition because he felt constrained by Brown to find that these student employees are not entitled to invoke the Board's procedures or the protections of the Act.

As noted above, the Petitioner's Request that the Board overrule Brown is now pending. The Employer has requested that, if the Board grants the Petitioner's Request for Review, it also review the following issues:

1. The Acting Regional Director's finding that the Petitioner is a labor organization;

2. The Acting Regional Director's application of accretion analysis in deciding whether a change in the Employer's operations resulted in the addition of hundreds of graduate students to the adjunct bargaining unit;

3. The Acting Regional Director's factual findings regarding the terms and conditions of employment of graduate students appointed by the Employer as adjunct faculty;

4. The Acting Regional Director's finding that, on the record in this case, all RAs perform services for the University for which they are compensated;

5. The Acting Regional Director's conclusions regarding the scope of the unit; and

6. The Hearing Officer's ruling revoking the Employer's subpoena for certain internal communications among and between affiliates of the UAW.

The Employer has failed to establish grounds upon which review should be granted with respect to any of these issues. Under the authority granted in § 3(b) of the Act, the primary responsibility "to determine the unit appropriate for the purpose of collective bargaining" has been delegated to the regional directors. 29 U.S.C. § 153(b); Rules and Regulations section 102.67. Review of a regional director's decision is discretionary – "... the Board ***may*** review any action of a regional director....." § 3(b), 29 U.S.C. §153(b). A party has no right to plenary review of a regional director's unit determinations. Magnesium Casting Co. v. NLRB, 401 U.S. 137 (1971). Discussing the legislative history of §3(b), the Court stated, "We take this statement to reflect the considered judgment of Congress that the regional directors have an expertise concerning unit determinations." Id. at 141-42 (citing Conference Committee Report statement by Senator Goldwater). Regional directors have been given the responsibility to make unit determinations in order to expedite the processing of representation cases. Ibid. Thus, in order to obtain review, a party must demonstrate "compelling reasons" for the Board to grant review. Rules and Regulations, section 102.67(c).[1]

The Employer's Conditional Request for Review disregards the primary role of regional directors in making factual finding and unit determinations in representation cases. Rather than establish "compelling reasons" to grant review, the Employer has taken a scattershot approach, attacking virtually every aspect of the Acting Regional Director's Decision. Contrary to the regulatory scheme established pursuant to §3(b), the Employer would have the Board analyze a record of more than 1700 pages of

[1] The same principles apply to a decision of an acting regional director. Korb's Trading Post, 232 NLRB 67, 68 n.3 (1977).

testimony and nearly 200 exhibits to make new factual findings. This is not the process intended by Congress.

The Board should grant the Petitioner's Request for Review to address an important, discrete legal issue concerning the rights of graduate student employees. The Board should deny the Employer's Conditional Request for Review, which attempts to make the Board the primary finder of fact in this matter.

II. LABOR ORGANIZATION STATUS OF THE PETITIONER

The Acting Regional Director found that GSOC is an organizing committee established by the International Union, UAW, composed of graduate student employees and UAW staff. Employees thus participate in the organizing activities of the committee and, according to the UAW Constitution, will participate in negotiations when the UAW is certified (Dec. 3).[2] These findings are sufficient to support the Acting Regional Director's conclusion that the Petitioner is a labor organization.

Under §2(5) of the Act:

> The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

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2 References shall be as here designated:

Decision and Order Dismissing Petition ..... Dec. [followed by page number]
New York University's Conditional Request for Review .... Er. Req. for Rev. [followed by page number]
Transcript ..... Tr. [followed by page number]
Employer's Exhibit ..... Er. Ex. [followed by exhibit number]

This definition is intentionally phrased very broadly. Electromation, Inc., 309 NLRB 990 (1992), enf'd, 35 F.3d 1148 (7th Cir. 1994); NLRB v. Cabot Carbon Co., 360 U.S. 203, 211 n. 7 (1959). The Board has repeatedly held that all that is required to establish labor organization status is some evidence that employees participate in the organization, and some evidence that the organization intends to negotiate on behalf of employees. Roytype, Div. of Litton Bus. Sys., 199 NLRB 354 (1972); East Dayton Tool & Die Co., 194 NLRB 266 (1971); Butler Mfg. Co., 167 NLRB 308 (1967); Grand Lodge, Int'l Ass'n of Machinists, 159 NLRB 137 (1966); Alto Plastics Mfg. Corp., 136 NLRB 850, 851 (1962).

The Employer concedes that employees participate in GSOC, but it claims that the record fails to establish that a purpose of GSOC is to "deal with" NYU with respect to wages, hours, and conditions of employment. In this regard, the Employer relies upon cases finding that organizations created for the purpose of assisting organizing campaigns are not themselves labor organizations. E.g., Ctr. for United Labor Action, 219 NLRB 873 (1975); Sterling Processing Corp., 119 NLRB 1783 (1958); Glove Workers Union of Fulton County, 116 NLRB 681 (1956). However, each of those cases involved a group that was separate and distinct from the labor organization that it supported and that did intend to participate in representation of employees. GSOC, by contrast, is part of the UAW, which the Employer concedes is a labor organization.

The Employer nonetheless argues, without any supporting evidence, that GSOC's role will end when the organizing campaign is concluded. Contrary to that unsupported assertion, the Acting Regional Director found that GSOC members will participate in bargaining if graduate employees vote for representation. That finding is

bolstered by a document introduced into the record by the Employer, which shows that when the UAW represented these employees between 2001 and 2005, GSOC remained involved in the representation of those employees. The Final Report of the Senate Academic Affairs Committee and Senate Executive Committee, which recommended that the University withdraw recognition after the contract expired, refers to the role of the "Graduate Student Organizing Committee (GSOC) members" in bargaining. (Er. Ex. 38, pp. 1-2).[3]

Furthermore, as the Acting Regional Director noted, the name of the Petitioner clearly reveals its affiliation with the UAW, so that employees will understand that they are voting to be represented by a labor organization. The Board requires only that the name of a union on the ballot not create confusion about who will represent the voters if they select GSOC/UAW as their bargaining agent. Humane Soc'y for Seattle/King County, 356 NLRB No. 13 (2010). Therefore, the Acting Regional Director correctly distinguished the cases relied upon by the Employer and found that Petitioner is a labor organization.

III. THE ACTING REGIONAL DIRECTOR CORRECTLY FOUND THAT TEACHING ASSISTANTS HAD NOT BEEN ACCRETED TO THE UNIT OF ADJUNCT FACULTY

As discussed in the Acting Region Director's Decision and in our Request of Review, FAR-4 changed the way in which the Employer compensates most graduate students who teach. The Employer has taken the position that this change converted those employees into members of the adjunct bargaining unit represented by another affiliate of the UAW, ACT-UAW Local 7902. The Acting Regional Director found that these

[3] A copy of Employer's Exhibit 38 was included with the Petitioner's Request for Review and therefore is already before the Board.

employees were not an accretion to the adjunct bargaining unit because they did not share "an overwhelming community of interest with the adjunct faculty...." (Dec. 27). The Employer challenges this finding on factual and legal grounds, none of which present "compelling reasons" to grant review.

The Employer's factual challenge focuses on two of the Acting Regional Director's findings. The Employer disputes the Acting Regional Director's finding that, prior to 2009, graduate students had been classified as adjunct faculty members "only if they were appointed as the course 'instructor of record'...." (Dec. 13; Er. Req. for Rev. 8). In challenging this finding, the Employer argues that, before 2009, "graduate students who were appointed as adjuncts served ... as recitation leaders and lab section leaders in non-credit courses." (Er. Req. for Rev. at 9). There may have been instances in which that occurred, but the Employer does not point to a single example in the record. The Employer also disputes the finding that "'the historical graduate [student employee] unit was mostly comprised of graduate students teaching non-credit courses.'" (Dec. 14, n. 14; Er. Req. for Rev. 11). The Employer cites the Regional Director's Decision in NYU I for the proposition that "numerous TAs included in that bargaining unit ... served as instructors of record in credit courses – for example in the Expository Writing Program and language instruction." (Er. Req. for Review 11, citing NYU I, 332 NLRB at 1211-12). A footnote on one of the pages cited by the Employer describes statistical studies of the Employer's operations. An analysis of the statistics in that footnote confirms that, as the Acting Regional Director found, most of the work performed by TAs involved serving as recitation leaders or laboratory instructors – not serving as instructor of record for stand-alone courses. NYU I, 332 NLRB at 1211 n. 16.

More fundamentally, the Employer's challenges to the findings of fact do not go to the issue that lies at the heart of the Acting Regional Director's legal analysis. Regardless of the precise breakdown of the duties formerly performed by TAs and now performed by graduate students classified as adjunct faculty, it is undisputed that the Employer took hundreds of students who would have been classified as TAs in past years and classified them as adjunct faculty beginning in 2009. The Acting Dean of the Faculty of Arts and Sciences, who testified for the Employer, confirmed that this is what occurred. (Tr. 447-48).[4] He further testified that students converted to adjuncts as a result of FAR-4 now perform the same duties that were performed by TAs in previous years. (Tr. 448). Thus, it is undisputed that FAR-4 resulted in the conversion of hundreds of graduate employees into adjunct faculty.[5]

The Employer also challenges the legal standard applied by the Acting Regional Director. The Acting Regional Director held that FAR-4 did not result in the addition of these employees to the adjunct bargaining unit because "the former teaching assistants do not share an overwhelming community of interest with the adjunct faculty...." (Dec. 27). As the Employer recognizes, this "overwhelming community of interest" standard is applied by the Board to determine whether employees have been accreted to an existing bargaining unit. E.g., Frontier Tel. Co. of Rochester, Inc., 344 NLRB 1270 (2005), enf'd, 2006 U.S. App. LEXIS 12443 (2nd Cir. 2006). The Employer argues that

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4 Copies of these two transcript pages are appended to this memorandum.

5 The Acting Regional Director's failure to note the finding in NYU I that TAs routinely served as instructors of record in language departments thus does not affect his accretion finding. In light of this history, the Petitioner would not object to addition of graduate students teaching language classes to the unit found appropriate by the Acting Regional Director.

The Board uses the term "accretion" to refer to "the addition of employees into a bargaining unit without an election." AG Commc'ns Sys. Corp., 350 NLRB 168, 182 (2007). The Employer's contention is that hundreds of employees have been added to the adjunct bargaining unit, yet it argues that accretion analysis is not applicable. The Employer cites several cases in support of its argument, none of which involve the transformation of employees historically excluded from a bargaining unit into unit employees. On the contrary, the cases cited by the Employer involved newly created job classifications in which employees performed duties historically performed by unit employees. E.g., Tree of Life, 336 NLRB 872, 873 (2001); Developmental Disabilities Inst., 334 NLRB 1166, 1168 (2001); Premcor, 333 NLRB 1365, 1364, (2001). By contrast, the instant case does not involve a newly created job classification. Rather, this case involves a large group of employees who had historically been excluded from the adjunct bargaining unit and who, indeed, had been included in a different bargaining unit. The question is whether the Employer's decision to reclassify them caused them to be added to the adjunct bargaining unit without an election or the agreement of the Union representing the adjuncts. As the Acting Regional Director recognized, that is an issue of accretion

The Employer also argues that it was error for the Acting Regional Director to take into consideration the different relationship that graduate student employees have to the University because they are students. Contrary to the Employer's argument, it was entirely proper and consistent with precedent for the Acting Director to consider student status in making his unit determination. This is the true holding of Adelphia University, 195 NLRB 639 (1972), a precedent that was mischaracterized by the

majority in Brown. In Adelphia the Board held that teaching assistants had a separate community of interest from faculty members because the TAs were "primarily students." 195 NLRB at 640.[6] Among the factors cited by the Board in concluding that graduate assistants should be excluded from a faculty unit were that they "are graduate students working toward their own advanced academic degrees, and their employment depends entirely on their continued status as such." Id. Similarly, the Board has considered "student status" in several other cases in excluding student employees from units of other employees at the universities where they were enrolled. See, e.g., Saga Food Serv. of Cal., 212 NLRB 786 (1974); Barnard Coll., 204 NLRB 1134 (1973); Cornell Univ., 202 NLRB 290 (1973); Georgetown Univ., 200 NLRB 215 (1972). Thus, the Acting Regional Director's consideration of student status was consistent with precedent.

In arguing that student status is not an appropriate consideration, the Employer states, "Board precedent holds that the determination of community of interest is based on the individuals' status as employees and not factors – such as student status – outside the employment relationship." (Er. Req. for Rev. 24). In support of this assertion, the Employer relies upon two categories of cases: cases involving prison inmates in work-release programs and cases involving employees in the military. There is nothing in those cases about "student status." The Board and the courts have hold that it was the employees' relationship to the employer, and not their relationship to the prison or the military, that determines whether they shared a community of interest with other employees. There is language in some of those cases which, taken out of

[6] The Board majority in Brown seized upon the phrase "primarily students" as used in Adelphia to justify the finding that graduate assistants were not employees. Adelphia does not even suggest that the status of graduate assistants as students was inconsistent with employee status under the Act. Rather, the fact that graduate assistants were students was a factor considered by the Board in determining whether they shared a community of interest with faculty members who were not students.

context, could support the Employer's argument. For example, in Winsett-Simmonds Engineers, 164 NLRB 611 (1967), the Board included prisoners on work-release in bargaining unit, writing, "The test as to whether an employee shares a community of interest with his fellows so as to be included in a unit with them depends on his status while in the employment relationship and not what ultimate control he may be subjected to at other times." 164 NLRB at 612. In context, this reference to "control at other times" is a reference to the control exercised by the prison system over the employees when they were not at work. The Board held that the prisoners' relationship to an outside institution, the Shelby County Penal Farm, was irrelevant to their unit placement. What mattered was their relationship to the institution that employed them.

In the instant case, the Acting Regional Director based his community of interest determination on the graduate student employees' relationship to NYU, the institution that employs them. That relationship includes the fact that they are students as well as employees. Students, by definition, have a relationship to the University in which they are enrolled that differentiates them from employees who are not students. Moreover, as the Acting Regional Director found, the fact that they are students has an impact on the employment relationship as well. Therefore, the Acting Regional Director did not depart from officially reported precedent in considering student status in making his unit determinations.

IV. UNIT SCOPE ISSUES

The Acting Regional Director found that, unlike NYU I, the unit in this case should include science RAs funded by external grants. The Acting Regional Director based this conclusion on the record in this case, which established facts that were absent from

the record in NYU I. In particular, the Acting Regional Director found that research is one of the main priorities of the University, that work performed by RAs funded by external grants fulfills this mission, and that the University benefits from this work (Dec. 20). He found that, in order to obtain external funding, the University is obligated to provide the funding agency with a grant application that includes a description of the work to be performed by all personnel funded by the grant, including RAs (Dec. 20). The earnings of RAs working under such grants are treated as personnel costs (Dec. 20). If the application is approved, then the Employer is responsible for ensuring that funds are expended consistent with the grant application (Dec. 21). RAs are required to provide twenty hours per week of services in exchange for payment (Dec. 21). Thus, they perform services that benefit the Employer, under the direction and control of the Employer, in exchange for compensation. The Employer does not dispute any of these factual findings. Under the broad, common-law definition of "employee" reflected in section 2(3) of the Act, RAs should therefore be found to be employees. See, e.g., NLRB v. Town & Country Elec. Co., 516 U.S. 85 (1995); Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984); Boston Med. Ctr., 330 NLRB 152 (1999).

Similarly, the Employer challenges the Acting Regional Director's decision to include certain graduate students working hourly jobs. Employees in the payroll category for "graduate assistant" were included in the bargaining unit previously represented by the Petitioner. The Employer has eliminated the payroll category for graduate assistant as part of FAR-4, but the Acting Regional Director found that there are now hourly employees performing duties previously performed by graduate assistants. The Acting Regional Director found that an appropriate unit would include

hourly paid graduate employees who are given the job title "research assistant" or who have a job title that demonstrates that they are continuing to provide the type of assistance to a faculty member previously performed by graduate assistants. The Employer has cited no compelling reasons to disturb this finding.

V. THE HEARING OFFICER'S SUBPOENA RULING

Joel Schlemowitz, President of ACT-UAW Local 7902, the local union that represents the adjunct faculty, testified about his local's response to the Employer's unilateral decision to convert TAs to adjunct faculty. Schlemowitz testified that Local 7902 concluded that TAs should not be added to the adjunct bargaining unit, and publicized this position through a mass e-mailing, a website posting, and a leaflet distributed on campus. (Dec. 11). The Acting Regional Director quoted from that leaflet in his decision:

> GSOC/UAW and ACT-UAW believe that graduate employees - not the NYU administration - deserve the right to determine who represents them. The majority of NYU graduate employees have consistently chosen GSOC/UAW to represent them in collective bargaining. ACT-UAW respects graduate employees' right to self-determination and their choice to join together as graduate employees with common interests to negotiate the best possible contract for ALL of the work graduate employees perform. ACT-UAW stands in solidarity with GSOC/UAW for their right to collectively bargain with NYU. ACT-UAW will NOT collect dues or fees at this time from NYU graduate employees who have been unilaterally reclassified by NYU as adjunct faculty.

(Dec. 11). Schlemowitz also testified that ACT-UAW took steps to avoid accepting dues from graduate students who would have been included in the former graduate assistant bargaining unit. (Dec. 12).

The Employer subpoenaed internal Union communications related to ACT-UAW's decision to take the position set out in the leaflet quoted above.[7] The Union petitioned to revoke these paragraphs of the subpoena on the ground that internal union communications regarding organizing strategy and positions to be taken are confidential, see, e.g., National Telephone Directory, 319 NLRB 420 (1995); Smitty's Supermarkets, 310 NLRB 1377 (1993); Berhiglia Inc, 233 NLRB 1476 (1977), and that the Union's internal communications are irrelevant to any issue in dispute. The Hearing Officer granted the Union's petition to revoke, and the Acting Regional Director upheld that ruling.

The subpoenaed records were not relevant to any issue in this case. The Employer argues that it needed these internal communications in order to determine the extent to which ACT-UAW "considered graduate students to be included in the adjunct bargaining unit." (Er. Req. for Rev. 38). The subpoenaed records did not bear upon the position actually taken by ACT-UAW. That position is revealed by the public statements made shortly after the TAs were converted to adjunct faculty. The subpoena seeks records that related to the union's internal decision making process, such as how and why Schlemowitz decided to oppose the addition of former TAs to the ACT-UAW bargaining unit. He may have taken that position spontaneously, based upon his own ideas about the interests of graduate students and of adjunct faculty members. He may have taken that position at the request and urging of other Union officials. Whether he

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[7] The Employer did not include a copy of the subpoena with its Request for Review. Therefore, the conditional Request for Review is not a "self contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record" as required by Rule 102.67(d). A copy of the subpoena is included with this memorandum to show that the documents sought were irrelevant, as the Hearing Officer found.

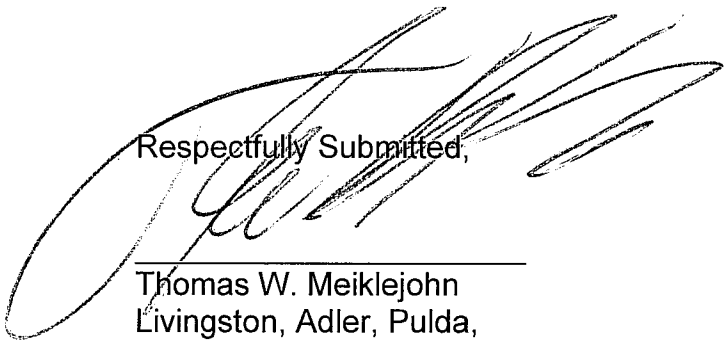
The Employer also subpoenaed copies of dues checkoff authorization cards that ACT-UAW received from graduate student adjuncts, but which it declined to process because it did not consider these employees to be part of its bargaining unit. The Employer points to the Acting Regional Director finding that, "no evidence was adduced regarding dues receipts" from graduate student adjuncts (Dec. 14). The Employer implies that it was prevented from presenting such evidence because its subpoena for dues authorization cards was revoked. The subpoenaed cards, however, would not have enabled the Employer to make such a showing. The subpoena called for the production of authorization cards that were ***not*** processed as a result of ACT-UAW's decision to avoid taking dues from graduate student employees. These cards would not show if there were cases in which dues checkoff payments were accepted from graduate student adjuncts. If the Employer wanted to introduce evidence that dues checkoff payments to the adjunct union had been made by graduate student employees, it could have produced such evidence from its own payroll records. Accordingly, the Hearing Officer properly revoked this subpoena.

For all of these reasons, the Board should deny the Request to Review the Region's subpoena ruling.

VI. CONCLUSION

The Employer has not come forward with compelling reasons to review the Acting Regional Director's decision. The Board should grant review for the purpose requested by the Petitioner: to decide whether to overrule Brown. The Board should not

grant the Employer's attempt to have the Board usurp the regional director's role in deciding representation cases.



Respectfully Submitted,

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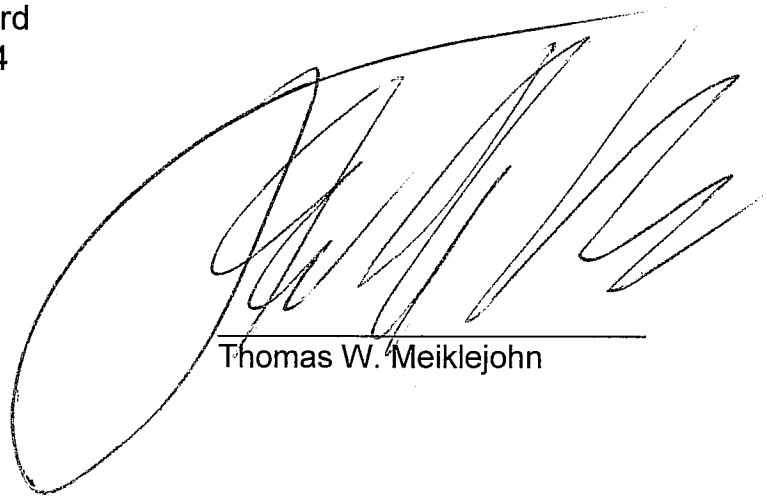
CERTIFICATE OF SERVICE

This hereby certifies that the foregoing Petitioner's Opposition to Employer's Conditional Request for Review was electronically mailed, on this 14th day of July 2011 to all counsel of record as follows:

Edward A. Brill, Esquire
Brain Rauch, Esquire
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036

Elbert F.Tellem
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278



Thomas W. Meiklejohn

Q -- and convert them into what the university considers to be the adjuncts correct?
A I think that's roughly correct, yes.
Q Now, those individuals who in 2008 were classified as TAs, and who are now classified as adjuncts, they continue to be enrolled in PhD programs correct?
A Correct.
Q The receive the same health insurance benefits correct?
A Correct.
Q They -
A One moment.
Q Okay, I'm sorry.
A I don't know for sure that they are the same individuals, in many cases they will be but there might have been a change in personnel, I just don't know.
Q I'm sorry, yes. There has been two classes that left and two classes that came into replace them.
A Yes.
Q So, the identities of the individuals may change but the types of people we're talking about stay the same?
A Yes.
Q And the duties that they are performing now are substantially the same duties that were performed by the graduate students classified as TAs back in 2008.
A Yes.

knowledge, how much weight the reader should give it is a different question, but I'll allow the question.

But it was a little confusing the way you phrased it just before the objection, so if you could rephrase the question.

BY MR. MEIKLEJOHN:

Q To the best of your knowledge and belief how many TAs, how many graduate student employees were classified as Teaching Assistants in the Fall of 2008?

MR. BRILL: Objection, there was no graduate student employees in the Fall of 2008. Again it's a loaded question.

MR. MEIKLEJOHN: All right.

HEARING OFFICER DAVIS: I'll overrule the objection.

BY MR. MEIKLEJOHN:

Q How many graduate students classified as TAs?

A I was going to draw the conclusion that there would be a similar number as there now, but I'm hesitant to do that because FAR-4 may have increased or decreased the number of students who wanted to teach relative to then.

So I really realize I have no basis for making or assuming that the number of graduate students who are teaching now would be the same in the Fall of 2008, as a result of FAR-4, the number may have changed.

Q The impact of FAR-4 however was to take a group of hundreds of graduate students classified as TAs --

A Yes.

FORM NLRB-31
(12-07)

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records,

Petitioner GSOC/UAW

As requested by Edward A. Brill, Proskauer Rose

whose address is 11 Times Square (Street) New York (City) New York (State) 10036 (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Hearing Officer

of the National Labor Relations Board

at 26 Federal Plaza, Room 3614

in the City of New York, New York 10278

on the 28th day of February 2011 at 9:30 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in New York University Case No. 2-RC-23481

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books,records, correspondence, and documents:

SEE ATTACHED RIDER

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

B - 624981

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at New York, New York

this 16th day of February 2011

Lester A. Heltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The

Subpoena Rider

New York University, Case 2-RC-23481

Subpoena No. B-624981 -- GSOC / UAW

Attachment "A"

Definitions and Instructions

This subpoena is intended to cover all documents that are available to you or subject to your reasonable acquisition, including but not limited to documents in the possession of attorneys, accountants, advisers or any other persons directly or indirectly subject to your control. This subpoena does not request documents protected from disclosure by the attorney-client privilege.

As used in this request, the term "document" or "communications" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, agreements, communications, correspondence, telegrams, memoranda, facsimile transmissions, notes, statistics, letters, pamphlets, newsletters, press releases, bulletins, transcripts, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, conferences, transcripts or summaries or reports of investigations or negotiations, drafts, letters, internal or inter-office memoranda or correspondence, lists, data contained in computers, E-mail, any marginal comments appearing on any documents, and all other writings, figures or symbols of any kind.

Whenever used herein, "NYU" shall mean New York University.

Any entity referred to herein, including, but not limited to, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") Local 7902, UAW, Local 2110, UAW and GSOC / UAW, shall mean the entity, and any officials, employees and/or representatives thereof.

Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to the parties shall be deemed to refer to any and all of their owners, officers, representatives and agents; and the masculine shall be deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and the words "each", "every", "any", and "all" shall be deemed to include each of the other words.

Unless otherwise stated, each item requested in this subpoena covers the period from September 1, 2008 through the present.

Attachment "A" to Subpoena B-624981 to GSOC / UAW:

Documents Required To Be Produced By This Subpoena

1. Copies of all communications between GSOC / UAW and Local 7902, UAW relating to NYU graduate students who serve as adjunct faculty at NYU.

2. Copies of all communications between GSOC / UAW and Local 2110, UAW relating to NYU graduate students who serve as adjunct faculty at NYU.

3. Copies of all communications between GSOC / UAW and the UAW relating to the representation or potential representation of NYU graduate students who serve as adjunct faculty at NYU by any local affiliated with the UAW.

4. All internal and/or external communications relating in any way to the MacCracken Financial Aid Program and/or FAR 4.

5. All documents relating to the inclusion of graduate students in, or the exclusion of graduate students from, the adjunct bargaining unit represented by Local 7902, UAW.

6. All requests for membership in Local 7902, UAW and/or authorization cards, from or on behalf of NYU graduate students from which "samples" were selected and produced as Petitioners Exhibit 48 in the course of Joel Schlemowitz's (President, Local 7902) testimony in the above-identified proceeding.

7. All e-mails in Daniel Hoffman-Schwartz's or GSOC / UAW's possession relating to his appointment(s) to teach at the Gallatin School.